



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2018

Delivered on: 27.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) (NPD) No.2562 of 2015

1.Narayanasamy

(mentioned as Narayana Pathar)

2.Ravichandran

3.Mohan

4.Sarangan

.. Petitioners/Petitioners/

Defendants 1,3,4&9

vs.

Arulmigu Adhi Kumbeswarar Koil Devasthanam,

Kumbakonam,

rep. by its Executive Officer,

having office at

Kumbakonam Town,

Thanjavur District.

.. Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the Fair and Decreetal Order of the learned II Additional District and Sessions Judge, Thanjavur in I.A.No.508 of 2015 in O.S.No.189 of 1999 dated 08.10.2015.

For Petitioners

: Mr.S.Rajaprabu

For Respondent

: Mr.M.R.S.Prabhu

ORDER

The Defendants 1, 3, 4 and 9 in the suit in O.S.No.189 of 1999 are the Revision Petitioners before this Court and they filed this Civil Revision Petition as against the dismissal of their application filed under Section ec.5 of the Limitation Act made in I.A.No.508 of 2015 dated 08.10.2015 by the Learned II Additional District and Sessions Judge, Thanjavur.

2.It is the contention of the learned Counsel for the Revision Petitioners that the Respondent herein as Plaintiff filed the above suit against the Petitioners herein before the Learned II Additional District Judge, Thanjavur for the relief of permanent injunction restraining the defendants 1 to 10 from alienating the suit property and for permanent injunction restraining the defendants 13 and 14 from registering any documents presented by the defendants 1 to 10. It is the contention of the learned counsel for the Revision Petitioners that when the above suit was posted for trial on 14.11.2007 as there was no appearance on the side of the Revision Petitioners and therefore an ex-parte decree was passed

against them. In order to set aside the ex-parte decree, the Petitioners have filed I.A.No.508 of 2015 seeking to condone the delay of 2682 days.

3. According to the Revision Petitioners the 2nd Petitioner, Ravichandran alone was conducting the case on behalf of other Petitioners. Since in the third week of October 2007 the 2nd Petitioner was affected by Jaundice, he could not move anywhere and he was taking native medicine and therefore he was not able to appear before the court on 14.11.2007. He further averred that he recovered from the said illness only in the month of August 2011 and thereafter he contacted his counsel at Thanjavur and he came to know that his counsel was already expired and the bundles were handed over to his juniors. When his juniors were contacted, it informed that proper intimation will be given at the time of Trial. But to their shock and surprise they received notice in the execution petition and thereafter only they came to know about the ex-parte decree passed against them on 14.11.2007.

4. The Respondent herein filed counter affidavit to the condone delay Petition and strongly opposed to condone the delay of 2682 days. It is the contention of the learned counsel for the respondent that the reason assigned by the revision petitioners is totally an utter false. Each and every day delay has to be explained, but in this case admittedly the petitioners have not assigned any valid reason, except saying that the 2nd petitioner was affected with Jaundice. Hence, he prayed to dismiss this civil revision petition.

5. Upon considering the arguments on either side the learned Trial Judge dismissed the application filed by the revision Petitioners by order dated 08.10.2015, holding that the Petitioners failed to explain the huge delay of 2682 days by letting in oral and documentary evidence. Challenging the same, the present Civil Revision Petition is filed.

6. I heard Mr.S.Rajaprabu, learned counsel for the petitioners and Mr.M.R.S.Prabhu, learned counsel for the respondent and perused the entire records.

7. The Revision Petitioners are defendants 1, 3, 4 and 9 in a suit filed by the respondent herein. The present CRP is filed as against the dismissal order passed in the condone delay Petition, refusing to condone the delay of 2682 days. The perusal of affidavit filed by the Petitioners has not make out any case in favor of the petitioners and the reason assigned by the petitioners herein to condone the inordinate delay is not only satisfactory, but also unacceptable. As usual the Petitioners have stated that the reason for non appearance was because of the jaundice. Further, as usual he had taken native medicine for the disease of Jaundice. In order to substantiate the same the Petitioners has not examined any independence witness on their side to prove the illness of Jaundice. As per records of this Court is not able to find any sufficient cause is shown by the Revision Petitioner to condone the delay of 2682 days.



8. Now it is for this court to see whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner.

9. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

10. In view of the above narration of factual and legal discussion, this Court is of the view that the order of the Trial Court in dismissing the section 5 application filed by the Revision petitioners is perfectly correct and the same is not required any interference by this Court. There is no infirmity or irregularity in the impugned order of the trial court and the same is liable to be affirmed. Accordingly, this Civil Revision Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The II Additional District and Sessions Judge,
Thanjavur.

+1CC to Mr. M. R. S. PRABHU, Advocate, SR.No.80845

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